

**Mental and Physical Examination  
Second Redraft Proposal**

**12-30-108. [Formerly 12-38-116.5 (8)] Mental and physical examinations.**

(8) (1) (a) SUBJECT TO ANY OTHER APPLICABLE REQUIREMENT SPECIFIED IN A PART OR ARTICLE OF THIS TITLE 12, if ~~the board~~ A REGULATOR has reasonable cause to believe that a ~~nurse~~ LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT is unable to practice ~~nursing~~ A HEALTH CARE PROFESSION REGULATED BY A PART OR ARTICLE OF THIS TITLE 12 with reasonable skill and safety to patients ~~because of a condition described in section 12-38-117 (1)(i) or (1)(j) or section 12-42-113 (1)(i) or (1)(j), it~~ OR CLIENTS, THE REGULATOR may require ~~such nurse~~ THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT to submit to mental or physical examinations. by a physician or other licensed health care professional designated by the board.

(b) (I) SUBJECT TO SUBSECTION (1)(b)(II) OF THIS SECTION, if a ~~nurse~~ LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT fails to submit to ~~such~~ THE mental or physical examinations, the ~~board~~ REGULATOR may suspend the ~~nurse's~~ license, CERTIFICATE, OR REGISTRATION until the required examinations are conducted.

(II) IF THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT DEMONSTRATES TO THE SATISFACTION OF THE REGULATOR THAT THE FAILURE TO SUBMIT TO THE EXAMINATION IS DUE TO CIRCUMSTANCES BEYOND THE LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S CONTROL, THE REGULATOR SHALL NOT SUSPEND THE LICENSE, CERTIFICATE, OR REGISTRATION.

(c) THE REGULATOR SHALL INCLUDE IN THE ORDER REQUIRING THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT TO UNDERGO A MENTAL OR PHYSICAL EXAMINATION THE BASIS OF THE REGULATOR'S REASONABLE CAUSE TO BELIEVE THAT THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT IS UNABLE TO PRACTICE WITH REASONABLE SKILL AND SAFETY.

~~(b)~~ (2) Every ~~nurse~~ LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT AUTHORIZED TO PRACTICE A HEALTH CARE PROFESSION REGULATED BY A PART OR ARTICLE OF THIS TITLE 12 shall be deemed, by so practicing or by applying for renewal ~~registration~~ of ~~such nurse's~~ THE license, CERTIFICATE, OR REGISTRATION, to have consented to submit to mental or physical examinations when directed in writing by the ~~board~~ APPLICABLE REGULATOR. Further, ~~such nurse~~ THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT shall be deemed to have waived all objections to the admissibility of the examining physician's or other licensed health care professional's testimony or examination reports on the ground of privileged communication. Subject to applicable federal law, ~~such nurse~~ THE LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT shall be deemed to have waived all objections to the production of medical records to the ~~board~~ REGULATOR from health care providers that may be necessary for the evaluations EXAMINATIONS described in paragraph (a) of this subsection (8). ~~Nothing in this~~

1 section shall prevent the nurse from submitting to the board testimony or examination reports  
2 of a physician or other licensed health care professional designated by the nurse to a  
3 condition described in paragraph (a) of this subsection (8) that may be considered by the  
4 board in conjunction with, but not in lieu of, testimony and examination reports of the  
5 physician or licensed health care professional designated by the board SUBSECTION (1)(a) OF  
6 THIS SECTION.

7 (e) (3) The results of any mental or physical examination ordered by the board  
8 REGULATOR shall not be used as evidence in any proceeding other than before the board  
9 REGULATOR and shall not be deemed a public record nor made available to the public.

10 (d) ~~The board may require that a nurse submit medical records for review in~~  
11 ~~conjunction with an investigation made pursuant to paragraph (a) of this subsection (8);~~  
12 ~~except that such records shall remain confidential and shall be reviewed by the board only~~  
13 ~~to the extent necessary to conduct an investigation.~~

14 (4) (a) THIS SECTION DOES NOT APPLY TO:

15 (I) ARTICLE 200 OF THIS TITLE 12 CONCERNING ACUPUNCTURISTS;

16 (II) ARTICLE 225 OF THIS TITLE 12 CONCERNING DIRECT-ENTRY MIDWIVES;

17 (III) ARTICLE 230 OF THIS TITLE 12 CONCERNING HEARING AID PROVIDERS; OR

18 (IV) ARTICLE 280 OF THIS TITLE 12 CONCERNING PHARMACISTS.

19 (b) SUBSECTION (1)(b)(II) OF THIS SECTION DOES NOT APPLY TO:

20 (I) ARTICLE 240 OF THIS TITLE 12 CONCERNING MEDICAL PRACTICE;

21 (II) ARTICLE 245 OF THIS TITLE 12 CONCERNING MENTAL HEALTH;

22 (III) ARTICLE 255 OF THIS TITLE 12 CONCERNING NURSES; OR

23 (IV) ARTICLE 260 OF THIS TITLE 12 CONCERNING NURSE AIDES.

24 (c) SUBSECTION (1)(c) OF THIS SECTION DOES NOT APPLY TO:

25 (I) ARTICLE 220 OF THIS TITLE 12 CONCERNING DENTISTS AND DENTAL HYGIENISTS;

26 (II) ARTICLE 240 OF THIS TITLE 12 CONCERNING MEDICAL PRACTICE;

27 (III) ARTICLE 245 OF THIS TITLE 12 CONCERNING MENTAL HEALTH;

28 (IV) ARTICLE 255 OF THIS TITLE 12 CONCERNING NURSES;

29 (V) ARTICLE 290 OF THIS TITLE 12 CONCERNING PODIATRISTS; OR

30 (VI) ARTICLE 315 OF THIS TITLE 12 CONCERNING VETERINARIANS.

31 (d) SUBSECTION (3) OF THIS SECTION REGARDING EVIDENCE AND CONFIDENTIALITY  
32 DOES NOT APPLY TO ARTICLE 245 OF THIS TITLE 12 CONCERNING MENTAL HEALTH.